

May 19, 2021

Today's Driving Events

- **Infrastructure Talk Continues:** Bipartisan negotiations at the White House, committee hearings, and rank-and-file jockeying are in full swing as negotiations over infrastructure legislation continue.
- **Democrats Continue to Lay Foundation for Drug Pricing Reforms:** The House Oversight and Reform Committee yesterday held a hearing on drug maker **AbbVie's (ABBV)** business practices to highlight their unparalleled combination of price increases and work to ensure that their products do not face biosimilar competition. The hearing is yet another example meant to bolster the case of Democratic leadership to include prescription drug pricing reforms in its forthcoming American Families Plan legislation.
- **Filling Out Biden's Financial Regulators:** With several financial regulators set to testify before Congress today, questions remain over who President Biden will ultimately choose to fill the remaining open and soon-to-be open positions, most notably at the Office of the Comptroller of the Currency and the Fed. In the meantime, acting Comptroller of the Currency Michael Hsu makes clear in his prepared written testimony his specific concerns about the fintech sector.

Which Road Does Infrastructure Go Down?: After meeting with White House officials yesterday, Senator Shelley Moore Capito (R-WV) said there's a "ways to go" to reach a bipartisan infrastructure deal but noted some progress. The White House said its team was "encouraged" by the meeting. Capito, along with a group of other Senate Republicans, are in direct negotiations with the Biden administration in trying to reach a deal. The details of the latest proposal from Senate Republicans were not publicly released, but Capito said the White House is taking a look at the latest GOP draft and will come back with a counter later this week. Capito noted that the issue of pay-fors still remains unresolved. "We really need to find out what we're gonna pay for it before we figure out how we pay for it," Capito said. Funding options put forward by some Senate Republicans include increased IRS enforcement, indexing the gas tax to inflation, repurposing unspent Covid-19 aid, an electric vehicle fee, and a vehicle miles traveled (VMT) fee on heavy commercial

trucks. **Out of those options, increased funding for the IRS is the only proposal that has real support from Democrats as of now.** But there are plenty of outstanding issues with the proposal, including how much money it would actually raise and how it would be scored by the Congressional Budget Office (CBO).

Democrats and Republicans are in agreement about bringing back the financing tool of tax credit bonds a la Build America Bonds. It's something that is supported by both Senate Finance Committee Chair Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) and is also a major priority for House Ways and Means Committee Chair Richard Neal (D-MA). **The Biden administration [also reportedly](#) "seemed open" to public-private partnerships (P3s),** according to Senator Roy Blunt (R-MO) who was a member of the group of GOP senators at the White House yesterday. **It's still an open question about what these financing options mean when it comes to reaching a bipartisan deal.** Republicans may see them as a way to lower the federal spending top line while Democrats may see it as just financing tools that will leverage the existing spending proposals. The House Ways and Means Committee will be holding its own hearing today on how to leverage the tax code for infrastructure. **It will be important to watch if the tight-lipped Neal provides any hints on his thinking on tax policies beyond financing to pay for President Biden's broader agenda. As negotiations continue between the GOP senators and the White House, Democratic leadership is in something of a holding pattern.** When asked about the timeline for the American Jobs Plan (AJP) and American Families Plan (AFP), House Majority Leader Steny Hoyer (D-MD) yesterday said it could be "two separate bills, one bill, other smaller bills. The admin is trying to discuss them with our R[epublican] colleagues and we don't know the answer to that yet." **But that holding pattern won't last for long.** The Memorial Day recess begins a week from Friday and the Senate Environment and Public Works Committee is still expecting to introduce and mark up a highway authorization bill by then. The House Transportation and Infrastructure Committee is not planning on voting on its surface transportation bill until after the Memorial Day recess. President Biden is expected to release his full FY22 budget request next week which will tee off the drafting of an FY22 budget resolution. The budget resolution is the tool for a budget reconciliation bill that would allow Democrats to pass certain tax and spending legislation on a party-line basis. When asked about timing for the budget resolution, Senate Budget Committee Chair Bernie Sanders (I-VT) just said, "Soon." Sanders is of the belief that it's foolhardy to work with Republicans and Democrats should just move to reconciliation. It's an opinion shared by several progressive Democrats.

Congressional Progressive Caucus Chair Pramila Jayapal (D-WA) wrote a [letter](#) Monday signed by nearly 60 other House members to Democratic leadership in the House and Senate calling for the AJP and AFP to be "preferably" passed as a "single, ambitious package." The letter noted that "while bipartisan support is welcome, the pursuit of Republican votes cannot come at the expense of limiting the scope of popular investment," with Jayapal calling for an even greater investment of \$7 trillion rather than the ~\$4.5 trillion Biden laid out in the AJP and AFP. This letter comes in contrast with [another letter](#) sent yesterday by the more moderate New Democrat Coalition and signed by over 40 House members to Democratic

leadership calling for a "return to regular order both in name and spirit" that prioritizes "the advancement of individual Member priorities and legislation, with a particular focus on the majority-makers, and be responsive to their concerns." **While the stated priorities in the letters seem different, there's a path on paper that involves Democrats using budget reconciliation as a complement/substitute to the bipartisan negotiations but being more deliberative with the rank-and-file during the process that would ameliorate the Congressional Progressive Caucus as well as the New Democrat Coalition. However, threading the needle to eventually get all but three House Democrats and every Senate Democrat on board will be no easy undertaking for Democratic leadership.**

House Democrats Stockpile Ammo for Drug Pricing Battle: Democrats in the House of Representatives have continued their attacks on drug manufacturers, this time singling out **AbbVie (ABBV)** for years of repeated price hikes (27 times) of its anti-inflammatory drug Humira and its attempt to create so-called "patent thickets" to ensure that the drug remains a monopoly without any biosimilar competition. The House Oversight and Reform Committee [released a lengthy staff report on Abbvie's actions](#) and the committee chair, [Rep. Carolyn Maloney \(D-NY\), alongside three other committee chairs, sent a letter to the Federal Trade Commission \(FTC\) requesting an investigation into the company's conduct](#). While yesterday's hearing and the staff report are not in and of themselves any more than headline risk to AbbVie in particular, they show the longstanding and continued interest of House Democratic leadership in pursuing reform to bring down the prices of prescription drugs. **Although lobbyists for drug companies and the firms themselves have done a good job in recent weeks pushing back on the chances for inclusion of drug pricing reforms in the forthcoming American Families Plan legislation, we are far less certain that House Speaker Nancy Pelosi (D-CA) will abandon her efforts merely due to industry pushback and a letter from a few moderate members of her caucus.** In fact, we do not expect those moderate members to vote against a bill put forward by House Democratic leadership on this basis, as it would present poor optics for their reelection and even could trigger a primary challenge from the left. As such, **the real questions for investors should be what form will any House proposal take and how much pushback will it receive in the Senate?** These remain open questions, but investors should not dismiss the chances of legislation passing by year end that will result in substantially less profits for drug makers relative to the status quo. **If not enough House Democrats ultimately vote against the bill based on its inclusion of drug pricing reforms, then it's only a question of whether Pelosi includes the full extent of her preferred provisions as a starting point for negotiations with her Senate Democratic colleagues. Although we are months away from any resolution of that debate, we do not see any indications that Pelosi will cave on this resoundingly popular issue for voters.** Finally, in regard to the FTC request, it is quite possible that acting Chair Rebecca Kelly Slaughter initiates an investigation in order to continue to demonstrate her progressive bona fides as she campaigns to be nominated by President Biden to assume the chair position permanently. This

would be a lengthy investigation, but it could result in a long-term overhang for the company before there is any resolution one way or another.

Hsu Raises Fintech Charter Concerns (Among Others): The House Financial Services Committee will hold a hearing today to discuss prudential regulation with testimony from Todd Harper, the chairman of the National Credit Union Administration; Michael Hsu, the acting Comptroller of the Currency; Jelena McWilliams, the chairman of the Federal Deposit Insurance Corporation; and Randal Quarles, vice chairman of supervision at the Federal Reserve Board of Governors. The majority of these witnesses are holdover appointees from President Trump as President Biden has been slow to nominate his full slate of financial regulators. This will have to change over the coming months as several of those currently in place will have their term expire, forcing Biden to choose whether he will reappoint them or replace them. One spot that has garnered particular interest is who Biden will nominate to run the Office of the Comptroller of the Currency (OCC). Hsu was appointed by the administration after his predecessor as acting comptroller, career staffer Blake Paulson, had continued to pursue the Trump administration's agenda, most notably the controversial True Lender Rule. **At this point there is no clear front runner for the position as Michael Barr, who seemed like the initial preference, was pushed aside by progressives and now progressives' lead choice, Mehrsa Baradaran, is no longer believed to be a front runner as well.** Manny Alvarez was said to be a leading candidate at one point, but his candidacy status is unclear at the moment. When announced, Hsu was viewed as a likely caretaker of the agency until a nominee was announced, but with no clear front runner there is a chance that Hsu could be appointed to take on the permanent position, although that is still not our base case. Nevertheless, we expect that whoever is ultimately tapped to permanently lead the OCC by Biden will share a similar regulatory agenda as Hsu. **To that end, in [his testimony for the hearing](#), Hsu offers what his top priorities in that role would be: guarding against complacency by banks, reducing inequality in banking, adapting to digitalization, and acting on risks that climate change presents to the financial system.** With regard to banks' complacency, Hsu is concerned that there is a greater appetite for risk now that the economic recovery is underway, leading to more banks pushing for exposure to "crypto-related activities" and special purpose acquisition companies (SPACs). **On fintech, Hsu highlights in his written testimony that he has asked the OCC's staff to review the agency's interpretative letter saying that banks are allowed to hold crypto assets for their customers and that he has concerns about offering fintech companies bank charters.** On the latter point, Hsu says he is "concerned that providing charters to fintechs will convey the benefits of banking without its responsibilities... [and] that refusing to charter fintechs will encourage growth of another shadow banking system outside the reach of regulators." But above all, Hsu argues that there should be more coordination between regulators in dealing with fintech and cryptocurrency as the current approach is extremely fragmented. The other regulatory seat that has garnered a lot of attention recently is what Biden will do

about Federal Reserve Chairman Jay Powell. Most recently a set of climate change activists publicly advocated against Powell's reappointment, citing the Fed's poor score among G-20 nations on a [climate change scorecard from advocacy group Positive Money](#). Before Biden has to decide about Powell though he will have to choose whether to replace Vice Chair for Supervision Randal Quarles. Quarles's term as vice chair expires in mid-October and a replacement nominee will likely be announced at some point this summer. **Current candidates for Quarles' position include Fed Governor Lael Brainard, but others are expected to be considered as well.** Brainard was also rumored to be a candidate for Biden's Treasury secretary after his electoral victory.

House

The House will reconvene at 12:00 p.m. and will consider the Fairness in Orphan Drug Exclusivity Act that would require manufacturers to demonstrate that they don't expect to recoup the research and development costs in order to have drugs granted exclusive orphan status. The House will also consider a bill that would establish a bipartisan National Commission to investigate the January 6th attack on the US Capitol complex.

Senate

The Senate will reconvene at 10:30 a.m. and will resume consideration of a resolution that would reverse an Equal Employment Opportunity Commission rule on conciliation procedures using the Congressional Review Act. The chamber will hold a vote on the resolution at 12:00 p.m. The Senate will then resume consideration of the U.S. Innovation and Competition Act (formerly the Endless Frontier Act). **The current version of the bill can be found [here](#) and a summary of the bill prepared by Senate Democrats can be found [here](#).**

White House

President Biden will depart the White House at 8:15 a.m. en route to New London, CT and will receive his daily intelligence briefing on the way at 9:00 a.m. At 11:00 a.m., he will give the keynote address at the Coast Guard Academy graduation. At 2:05 p.m., Biden will return to Washington, DC where he will arrive at the White House at 4:35 p.m.

Macroeconomic

At 9:00 a.m., the US Chamber of Commerce will hold a virtual Global Forum on Economic Recovery. [More information here](#).

At 10:00 a.m., St. Louis Federal Reserve Bank President James Bullard will speak on the U.S. economy and monetary policy at a virtual Official Monetary and Financial Institutions Forum fireside chat.

At 10:15 a.m., the House Small Business Committee Subcommittee on Innovation, Entrepreneurship, and Workforce Development will hold a hearing titled “The Small Business Administration’s (SBA) Entrepreneurial Ecosystem: An Update and Next Steps with SBA’s Resource Partners.”

At 2:00 p.m., the American Enterprise Institute for Public Policy Research will hold a webinar titled “Joe Biden’s Dollar Challenge,” focusing on inflation and the budget deficit. [More information here.](#)

At 2:00 p.m., the Brookings Institution will hold a webinar titled "State of the Capital Region 2021: Examining the Pandemic's Impact on the Geography of Jobs." [More information here.](#)

Antitrust

At 11:00 a.m., the Federalist Society for Law and Public Policy Studies will hold a virtual discussion titled “Regulating Social Media in the New Administration.” [More information here.](#) Expected participants include:

- Elizabeth Branch, circuit judge, US Court of Appeals for the Eleventh Circuit
- Noah Phillips, commissioner, Federal Trade Commission (FTC)
- Nathan Simington, commissioner, FTC

At 2:30 p.m., the Senate Judiciary Committee Subcommittee on Competition Policy, Antitrust, and Consumer Rights will hold a hearing titled “Antitrust Applied: Hospital Consolidation Concerns and Solutions.”

Coronavirus and Coronavirus Relief Legislation

At 10:00 a.m., the Senate Finance Committee will hold a hearing titled “COVID-19 Health Care Flexibilities: Perspectives, Experiences, and Lessons Learned.”

At 10:30 a.m., the House Oversight and Reform Committee Subcommittee on the Coronavirus Crisis will hold a hearing titled “Examining Emergent BioSolutions’ Failure to Protect Public Health and Public Funds.”

At 12:30 p.m., Axios will hold a virtual discussion titled "COVID-19 Vaccines and the Road Ahead." [More information here.](#) Expected participants include:

- Dr. Anthony Fauci, director, National Institute of Allergy and Infectious Disease

At 2:30 p.m., the Senate Homeland Security and Governmental Affairs Committee will hold a hearing titled “COVID-19 Part II: Evaluating the Medical Supply Chain and Pandemic Response Gaps.”

Defense

At 3:00 p.m., the Senate Appropriations Committee Subcommittee on Military Construction, Veterans Affairs and Related Agencies will hold a hearing titled "Military Infrastructure and Climate Resilience."

At 4:30 p.m., the Senate Armed Services Committee Subcommittee on Strategic Forces will hold a hearing on the atomic defense activities and programs in review of the Defense Authorization Request for FY2022 and future years defense program.

Education

At 1:00 p.m., the Center for American Progress will hold a webinar titled “Investing in K-12 Infrastructure to Build Back Better: Exploring the Need for Healthy Green Schools.” [More information here](#). Expected participants include:

- Rep. Robert Scott (D-VA)

Elections

At 10:00 a.m., the Heritage Foundation will hold a hearing titled “The Value of the Electoral College.” [More information here](#). Expected participants include:

- Senator James Inhofe (R-OK)

Energy, Environment, and Natural Resources

At 9:00 a.m., the Atlantic Council will hold a webinar titled “Enabling the Global Hydrogen Economy.” [More information here](#).

At 10:00 a.m., the Senate Environment and Public Works Committee will hold a hearing titled “Examining Biodiversity Loss: Drivers, Impacts, and Potential Solutions.”

At 10:00 a.m., the Senate Appropriations Committee Subcommittee on Transportation, Housing and Urban Development, and Related Agencies will hold a hearing titled “Rethinking Disaster Recovery and Resiliency, Part 2: Protecting Communities and Accelerating Assistance.”

At 10:00 a.m., the House Appropriations Committee Subcommittee on State, Foreign Operations, and Related Programs will hold a hearing titled “Global Climate Finance.”

At 10:30 a.m., the House Energy and Commerce Committee Subcommittee on Energy will hold a hearing titled “The FY2022 Department of Energy Budget.” Expected participants include:

- Jennifer Granholm, secretary, Department of Energy

At 11:00 a.m., the Information Technology and Innovation Foundation will hold a webinar titled “Energizing Innovation: Federal Energy Research, Design and Development in FY22 and Beyond.” [More information here.](#)

At 11:30 a.m., Washington Post Live will hold a virtual discussion with White House National Climate Advisor Gina McCarthy about the economic effect, as well as societal impact, of a greater emphasis on renewable energy. [More information here.](#)

At 1:00 p.m., the House Natural Resources Committee Subcommittee on Oversight and Investigations will hold a hearing titled “Misuse of Taxpayer Dollars and Corporate Welfare in the Oil and Gas Industry.”

Financial Services

At 10:00 a.m., the House Financial Services Committee will hold a hearing titled “Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions.” Expected participants include:

- Todd Harper, chairman, National Credit Union Administration
- Michael Hsu, acting comptroller of the currency, Office of the Comptroller of the Currency
- Jelena McWilliams, chairman, Federal Deposit Insurance Corporation
- Randal Quarles, vice chairman of supervision, Federal Reserve Board of Governors

Geopolitical

On Wednesday at 9:45 a.m., the Senate Foreign Relations Committee will hold a vote on the nominations of Bonnie Jenkins to be under secretary of State for arms control and international security and Jose Fernandez to be under secretary of State for economic growth, energy, and the environment. Following this, the committee will hold a hearing on the nominations of Brian Nichols to be assistant secretary of State for Western Hemisphere affairs and Michele Jeanne Sison to be assistant secretary of State for international organization affairs.

On Wednesday at 10:00 a.m., the House Foreign Affairs Committee will hold a markup that includes a bill to authorize appropriations to counter the malign influence of the Chinese Communist Party and a bill to establish in the Department of State the United States Energy Resource Governance Initiative to promote sound mining sector governance and resilient energy mineral supply chains by bringing countries together to engage on advancing governance principles, sharing best practices, and encouraging a level playing field for investment.

Healthcare

At 10:00 a.m., the Senate Appropriations Committee Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a hearing titled “Review of the FY2022 Budget Blueprint for the Centers for Disease Control and Prevention.” Expected participants include:

- Rochelle Walensky, director, Centers for Disease Control and Prevention (CDC)
- Anne Schuschat, principal deputy director, CDC

At 10:00 a.m., the House Appropriations Committee Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a hearing titled "Public Witness Day."

Immigration

At 10:00 a.m., the House Appropriations Committee Subcommittee on Homeland Security will hold a hearing titled “US Customs and Border Protection Resource Management and Operational Priorities.” Expected participants include:

- Troy Miller, acting commissioner, US Customs and Border Protection

Infrastructure

At 10:00 a.m., the House Ways and Means Committee will hold a hearing titled “Leveraging the Tax Code for Infrastructure Investment.”

Tax Policy

At 2:00 p.m., the Senate Appropriations Committee Subcommittee on Financial Services and General Government will hold a hearing titled “Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services.” Expected participants include:

- Charles Rettig, commissioner, Internal Revenue Service

Tech-Media-Telecom

At 11:00 a.m., the House Science, Space, and Technology Committee Subcommittee on Energy will hold a hearing titled “Accelerating Discovery: the Future of Scientific Computing at the Department of Energy.”

At 12:00 p.m., the Atlantic Council will hold a webinar titled “Computing to Win: Bridging the Artificial Intelligence (AI) Compute Divide.” [More information here.](#)

At 2:00 p.m., the House Appropriations Committee Subcommittee on Commerce, Justice, Science, and Related Agencies will hold a hearing titled “FY2022 Budget Request for NASA.” Expected participants include:

- Bill Nelson, administrator, National Aeronautics and Space Administration

Trade

At 3:00 p.m., the Council on Foreign Relations will hold a virtual discussion on the May/June issue of Foreign Affairs titled “Making Trade Work for Workers.” [More information here.](#)



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